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No. .....

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1987

DEAN WITTER REYNOLDS INC.
and HENRY H. DUKE
Petitioners,

VS.

BILLIE L. WEDERSKI,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

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QUESTIONS PRESENTED

The parties in this case entered into written agreements to arbitrate disputes arising between them. The questions presented are:

(1) Whether the United States Arbitration Act mandates arbitration of otherwise arbitrable state law claims where a party alleges that fraud "permeated" the written agreement containing the arbitration provision, but there is no allegation that the arbitration provision itself was induced by fraud?

(2) Whether the United States Arbitration Act mandates a trial of the threshold issue of purported fraud, where it is alleged that fraud renders an arbitration agreement unenforceable?

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OPINIONS BELOW

The opinion of the court of appeal (Pet.App.A) is unreported, as is the order denying review by the Supreme Court of the State of California (Pet.App.B).

JURISDICTION

The opinion of the court of appeal was filed April 14, 1987. The order denying a petition for rehearing of that decision was filed May 12, 1987. The order of the Supreme Court of the State of California denying review after judgment by the court of appeal was filed July 15, 1987. Jurisdiction in this Court is invoked under 28 U.S.C.

§ 1257(3). *See Southland Corp. v. Keating*, 465 U.S. 1, 6-8 (1984); *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975).

STATUTES AND REGULATIONS INVOLVED

The statutes and regulations involved in this case are set forth in full in the appendix (Pet.App.C). The citations to the statutes and regulations are as follows:

United States Arbitration Act,
Section 2, 9 U.S.C. § 2
Section 3, 9 U.S.C. § 3
Section 4, 9 U.S.C. § 4

STATEMENT OF THE CASE

Plaintiff and respondent Billie L. Wederski (hereinafter "respondent") filed her complaint in the Superior Court of the State of California for the County of Orange against defendants and petitioners Dean Witter Reynolds Inc.[1] and Henry H. Duke (hereinafter "petitioners" or "Dean Witter" and "Duke"), and defendant Roger Morrison[2] (hereinafter "Morrison") on May 2, 1986. The complaint consists of four causes of action, all purportedly

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[1]Petitioner Dean Witter Reynolds Inc. is a wholly-owned subsidiary of Dean Witter Financial Services Inc., which is itself a wholly-owned subsidiary of Sears, Roebuck and Co.

[2]Roger Morrison, a former employee of petitioner Dean Witter, is a named defendant in the superior court action. Morrison joined in the motion to compel arbitration granted in the superior court. Morrison, however, neither responded in the court of appeal to respondent's petition for issuance of peremptory writ of mandate nor petitioned for rehearing in the court of appeal after the grant of that petition, nor petitioned for review of the court of appeal decision to the Supreme Court of the State of California. Morrison nevertheless remains a party in the superior court action.

arising under state law. Respondent denominates her causes of action as "Breach of Fiduciary Duties", "Fraud and Deceit", "Negligent Infliction of Emotional Distress", and "Negligence and Gross Negligence".

The allegations supporting respondent's causes of action include, *inter alia,* that respondent opened a securities account with Dean Witter through account executive Morrison, that respondent's funds were used to purchase speculative investments inconsistent with her needs, that Morrison engaged in unauthorized and excessive transactions in respondent's account, and that these alleged malefactions were accomplished with the knowledge and approval of Duke, a managing agent of Dean Witter.

In August of 1985, when respondent commenced doing business with Dean Witter, she entered into three written contracts governing the conduct of her securities account. Each of the contracts, the "Customer's Agreement" (Pet.App.D), the "Active Assets Account Agreement" (Pet.App.E), and the "Options Trading Agreement" (Pet.App.F), contains a provision requiring arbitration of any controversy arising out of the account.

In response to the complaint, Dean Witter and Duke filed a petition to compel arbitration and a motion to stay proceedings,[3] seeking an order compelling arbitration of respondent's causes of action and staying further proceedings in superior court pending completion of the arbitration. In support of their request that respondent's causes of action be arbitrated, Dean Witter and Duke relied on the written agreements executed by respondent and on the mandate of the United States Arbitration Act,

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[3]The documents filed by petitioners Dean Witter and Duke are entitled "Petition to Compel Arbitration" and "Notice of hearing on Petition to Compel Arbitration and Motion to Stay Proceedings."

9 U.S.C. § 1, *et seq.*. ("Arbitration Act"). Defendant Morrison joined in the petition and motion.

Respondent filed an opposition to the petition to compel arbitration and motion to stay proceedings. Her opposition contained an uncorroborated declaration in which she alleged that she was fraudulently induced to enter into the agreements which contained the arbitration provisions. Thereafter, Morrison filed a declaration controverting the allegations of the complaint and the assertions contained in respondent's declaration. Petitioners Dean Witter and Duke filed a reply memorandum to the opposition papers that included a declaration by Duke that also controverted the allegations of the complaint and respondent's declaration. The superior court entered its order on July 25, 1986 granting the petition to compel arbitration.

Subsequent to the superior court's order, respondent filed a petition for issuance of peremptory writ of mandate in the court of appeal. Dean Witter and Duke filed an opposition to the petition. On April 14, 1987, the court of appeal filed its opinion (Pet.App.A) granting the peremptory writ and ordering that the superior court vacate its order granting arbitration and enter a new order denying arbitration. Dean Witter and Duke filed a petition for rehearing that was denied by the court of appeal on May 12, 1987. A petition for review to the Supreme Court of the State of California filed by Dean Witter and Duke was denied by that court on July 15, 1987 (Pet.App.B).

In its opinion, the court of appeal concluded that the superior court erred in ordering arbitration. It stated: "Wederski's complaint alleged fraud induced her assent to *all* the brokerage documents. As in *Main* [*v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 67 Cal.App.3d 19, 136 Cal.Rptr. 378 (1977)], Wederski alleges Dean Witter

concealed the true nature and content of the documents it had her sign. The truth of her allegations must be determined judicially." Pet.App.A, at 5 (Emphasis in original.)

ARGUMENT

The "permeation doctrine" sounds the deathknell for enforcement of arbitration agreements in the State of California. As utilized by the Court of Appeal of the State of California in this case, the doctrine permits a party objecting to arbitration to avoid arbitration altogether by the simple expedient of alleging that fraud induced the party to execute the contract containing the arbitration provision. The doctrine conflicts not only with the express language of the Arbitration Act, but also with the holding of this Court in *Prima Paint Corp. v. Flood & Conklin,* 388 U.S. 395 (1967).

I

THIS COURT SHOULD GRANT A WRIT OF CERTIORARI TO DETERMINE WHETHER COURTS MAY INVOKE THE PERMEATION DOCTRINE TO REFUSE TO COMPEL ARBITRATION

A. The Decision of the California Court of Appeal Undermines the Arbitration Act by Permitting Any Party to Avoid Arbitration Merely Through Pleading.

The court of appeal utilized the "permeation doctrine" in concluding that solely because respondent alleged in her complaint that fraud induced her assent to "all of the brokerage documents" arbitration should be denied. (See Pet.App.A, at 5). Courts that follow the "permeation doctrine" hold that arbitration should be denied when bare allegations are made that fraud "permeated" an

entire agreement containing an arbitration provision. *Ford v. Shearson Lehman American Express, Inc.,* 180 Cal.App.3d 1011, 1018-19, 225 Cal.Rptr. 895 (1986); *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 67 Cal.App.3d 19, 27, 136 Cal.Rptr. 378 (1977).

The effect of the permeation doctrine is to undermine the Arbitration Act's directive that arbitration agreements within the purview of that Act are "valid, irrevocable and enforceable . . ." 9 U.S.C. § 2. Under the permeation doctrine, when a dispute first arises, a party can cleverly plead that it was "fraudulently induced" to enter into the agreement containing the arbitration provision, thereby avoiding arbitration. The result is that " 'the mere cry of fraud in the inducement [will] permit the frustration of the very purposes sought to be achieved by the agreement to arbitrate, *i.e.*, a speedy and relatively inexpensive trial before commercial specialists.' " *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street,* 35 Cal.3d 312, 318, 197 Cal.Rptr. 581 (1983) (emphasis omitted) (quoting *Robert Lawrence Co. v. Devonshire Fabrics, Inc.,* 271 F.2d 402, 410 (2d Cir. 1959), *cert. dismissed,* 364 U.S. 801 (1960)).

Since arbitration can be denied under the decision of the court of appeal by the "mere cry of fraud," any party dissatisfied with its bargain can subvert the arbitration agreement and avoid arbitration altogether by invoking the permeation doctrine. Such invocations, and the concomitant increase in litigation resulting from them, will become more frequent as parties who perceive advantages in judicial rather than arbitral resolution attempt to avoid their written contractual obligations.

B. The Decision of the Court of Appeal Conflicts with a Decision of This Court.

The permeation doctrine utilized by the court of appeal is contrary to federal law as established in *Prima Paint Corp. v. Flood & Conklin,* 388 U.S. 395 (1967). In *Prima Paint,* this Court considered whether a federal court or an arbitrator should resolve a claim of fraud in the inducement of an agreement containing an arbitration provision. This Court agreed with the conclusion of the Second Circuit in *Prima Paint*:

> [A] claim of fraud in the inducement of the contract generally — as opposed to the arbitration clause itself — is for the arbitrators and not for the courts; and . . . this rule — one of 'national substantive law' — governs even in the face of a contrary state rule.

388 U.S. at 400 (footnote omitted). The Court decided in *Prima Paint* that arbitrators, not courts, will hear claims of fraudulent inducement of a contract. The permeation doctrine, contrary to *Prima Paint,* permits a court to hold that a claim of fraudulent inducement of the contract generally can prevent arbitration.

The Court's decision in *Prima Paint* was based on the express language of § 4 of the Arbitration Act, 9 U.S.C. § 4. The Court noted:

> Under § 4, . . . the federal court is instructed to order arbitration to proceed once it is satisfied that 'the making of the agreement for arbitration or the failure to comply [with the arbitration agreement] is not in issue.' Accordingly, if the claim is fraud in the inducement of the arbitration clause itself — an issue which goes to the 'making' of the agreement to arbitrate — the federal court may proceed to adjudicate it. But the statutory language does not permit

> the federal court to consider claims of fraud in the inducement of the contract generally.

388 U.S. at 403-04 (footnotes omitted).

In contrast to the federal, statutory analysis engaged in by this Court in *Prima Paint*, the analysis at the core of the permeation doctrine is based on state law tort and contract principles. For example, in explaining the permeation doctrine the court in *Ford v. Shearson Lehman American Express, Inc.*, 180 Cal.App.3d at 1028-29, reasoned:

> Since Ford declares that his signature on the agreements was obtained involuntarily . . . the type of fraud he alleges is fraud in the inception. If this type of fraud is proven, the agreements would be void *ab initio* and the arbitration clause contained therein would fall.

In the instant case, the court of appeal similarly relied on cases applying state law principles in denying arbitration rather than on the federal, statutory analysis engaged in by this Court in *Prima Paint*.[4]

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[4]*Ford v. Shearson Lehman American Express, Inc.*, 180 Cal.App.3d at 1024; *Main v. Merrill Lynch, Pierce, Fenner & Smith*, 67 Cal.App.3d at 33 n.5. Other California Courts of Appeal have recognized that state law prinicples are inapplicable to the enforcement of arbitration clauses in contracts governed by the Arbitration Act. *See, e.g., Lewis v. Prudential Bache Securities, Inc.*, 179 Cal.App.3d 935, 941, 225 Cal.Rptr. 69 (1986); *Tonetti v. Shirley*, 173 Cal.App.3d 1144, 1148, 219 Cal.Rptr. 616 (1985). *But see Liddington v. The Energy Group, Inc.*, 192 Cal.App.3d 1520, 1527, 238 Cal.Rptr. 202 (1987) (construing dictum in *Perry v. Thomas*, ____ U.S. ____, 107 S.Ct. 2520, 96 L.Ed.2d 426, 437 n. 9 (1987) for the proposition that state contract law principles apply under the "savings clause" of 9 U.S.C. § 2 so long as they are not rules that apply solely to arbitration agreements).

Other state courts have held that the permeation doctrine is a state law creation that conflicts with federal law under *Prima Print.* For example, in *Dolomite, S.p.A. v. Beconta, Inc.,* 129 Misc. 2d 857, 493 N.Y.S.2d 705 (1985), a New York state court held that while the permeation doctrine is the law of New York, it conflicts with federal law under *Prima Print* and therefore is preempted by federal law. For that reason, the court declined to consider whether the plaintiff had raised an issue as to permeation in that case since "that is not a reason recognized under Federal law for removing the issue from arbitration, and leaving it to the court." 129 Misc. 2d at 859. *Accord Sentry Systems, Inc. v. Guy,* 98 Nev. 507, 654 P.2d 1008 (1982).

The conflict between the decision in the instant case applying the permeation doctrine to deny arbitration, and that of this Court in *Prima Paint* will encourage forum shopping. While a claim of fraudulent inducement to enter into a contract generally, as opposed to fraudulent inducement of the arbitration clause itself, is a matter for the arbitrators under *Prima Paint,* if courts follow the permeation doctrine the "mere cry of fraud" will result in a denial of arbitration. In striking down a California interpretation of the Arbitration Act which had a like effect in *Southland Corp. v. Keating,* 465 U.S. 15 (1984), this Court noted:

> We are unwilling to attribute to Congress the intent, in drawing on the comprehensive powers of the Commerce clause, to create a right to enforce an arbitration contract and yet make the right dependent for its enforcement on the particular forum in which it is asserted.

The court of appeal decision in this case similarly makes the right to enforce a written arbitration agreement dependent on the particular forum in which it is

asserted: a claim of fraud in the inducement of the contract will be resolved in arbitration if that claim is asserted in federal court, while the same claim is sufficient to deny arbitration under the permeation doctrine if asserted in a California state court.

Since the decision of the court of appeal in this case conflicts with the decision of this Court in *Prima Paint Corp. v. Flood & Conklin,* 388 U.S. 395 (1967), and will encourage forum shopping, review of its decision by this Court is warranted.

II

THIS COURT SHOULD GRANT A WRIT OF CERTIORARI TO DETERMINE WHETHER A COURT MUST ORDER A TRIAL OF THE THRESHOLD ISSUE OF FRAUD WHEN A PARTY ALLEGES THAT IT WAS FRAUDULENTLY INDUCED TO ENTER INTO AN ARBITRATION AGREEMENT

A. The Decision of the Court of Appeal Requires an Exercise of this Court's Power of Supervision Because Federal Law Mandates a Trial of the Threshold Issue of Fraud if the Making of an Agreement to Arbitrate is in Issue.

In the instant case, the court of appeal directed the Orange County Superior Court "to vacate its order compelling arbitration and to enter a new order denying defendants' motion [to compel arbitraton and for a stay of proceedings]." Pet.App.A, at 5-6. However, under Section 4 of the Arbitration Act a party seeking arbitration is entitled to a summary trial "[i]f the making of the arbitration agreement . . . be in issue . . . ." Section 4 of the Arbitration Act provides:

> If the making of the arbitration agreement . . . be in issue, the court *shall* proceed summarily to the trial

> thereof. If no jury be demanded by the party alleged to be in default . . . the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may . . . demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

9 U.S.C. § 4 (emphasis added). Thus, even if the court of appeal was correct in ordering the denial of petitioners' motion to compel arbitration based on respondent's uncorroborated allegations of fraud, petitioners were entitled to an order that a trial of the fraud allegations be had prior to judicial proceedings on the merits of respondent's claims.[5]

The right to a summary trial of any issue of fraud in the inducement of an arbitration agreement was recognized by this Court in *Prima Paint Corp. v. Flood & Conklin*, 388 U.S. 395, 403-04 (1967). Moreover, in the very cases upon which the court of appeal relied in the instant case for its

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[5]While the court of appeal in the instant case seemed to imply that a threshold trial of respondent's fraud allegations was required, see Pet.App.A, at 6, no reference in the opinion was made to such a trial. Further, the court of appeal was requested to provide for such a trial in petitioners' petition for rehearing filed in the court of appeal. The petition for rehearing was denied without comment.

application of the permeation doctrine, trials of the threshold issue of fraud were ordered. *Ford v. Shearson Lehman American Express, Inc.*, 180 Cal.App.3d 1011, 1029, 225 Cal.Rptr. 895 (1986); *Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 67 Cal.App.3d 19, 33, 136 Cal.Rptr. 378 (1977).

The Arbitration Act expressly requires a summary trial of any issue concerning the making of an arbitration agreement within the scope of the Act. Furthermore, this Court in *Prima Paint* construed the Arbitration Act to require such a trial. Since the court of appeal concluded that an issue had been raised as to the making of the agreements to arbitrate in the instant case, yet refused to order a summary trial of the issue, the decision of the court of appeal calls for an exercise of this Court's power of supervision.

B. The Decision of the Court of Appeal Concerns a Matter of Considerable Public Importance Since the Right to Enforce Arbitration Agreements will be Illusory if Untested and Uncorroborated Allegations are a Sufficient Basis to Avoid Arbitration.

Under the decision of the court of appeal in the instant case, untested and uncorroborated allegations are a sufficient basis to avoid arbitration. The consequences of such a rule of law on the sanctity of contracts, and in particular on agreements to arbitrate, are serious and pervasive. In direct contravention of the express purpose of the Arbitration Act — to place an arbitration agreement "upon the same footing as other contracts, where it belongs," *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 219, (1985) (quoting H.R.Rep.No. 96, 68th Cong., 1st Sess., 1 (1924)) — the decision of the court of appeal diminishes the rights of parties to arbitration agreements as compared with other types of contracts. With respect to any other assertion of a contr.. tual right, a party has a

concomitant right to have the assertion determined by a finder of fact. In contrast, under the court of appeal decision in this case an allegation alone constitutes a sufficient basis for the determination that a contractual right does not exist.

The result of this refusal to test allegations of fraud in the making of agreements to arbitrate is that agreements to arbitrate no longer will be enforced. As parties become aware that the "mere cry of fraud" will permit them to avoid their contractual commitments, they will do so.

The public importance of this issue is also evident in the impact which the court of appeal decision will have on litigation in both state and federal courts. To the extent that mere allegations of fraud in the inducement result in refusals to enforce arbitration agreements, parties will seek judicial resolution of their disputes in lieu of the arbitration for which they contracted. Increases in judicial workloads and strain to the justice system will result.

In light of the importance of the decision of the court of appeal to the enforcement of arbitration agreements under the Arbitration Act, and the impact of the decision on judicial caseloads, review of the decision by this Court is warranted.

III

CONCLUSION

A review of the decision of the court of appeal in the instant case will resolve an important question of federal law concerning the enforcement of arbitration agreements, constitute a proper and necessary exercise of this Court's power of supervision and address an issue that will substantially impact state and federal judicial caseloads. For these reasons, petitioners Dean Witter Reynolds Inc. and Henry H. Duke respectfully request that this petition for writ of certiorari to the Court of Appeal of the State of California, Fourth Appellate District, Division Three be granted.

DATED: October 13, 1987

Respectfully submitted,

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APPENDIX A

G004574
(Super. Ct. No. 48-85-63)

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

BILLIE L. WEDERSKI,
Petitioner,

v.

SUPERIOR COURT, ETC.,
COUNTY OF ORANGE,
Respondent,

DEAN WITTER REYNOLDS, INC., et al.,
Real Parties in Interest.

OPINION

NOT TO BE PUBLISHED

Filed April 14, 1987.

ORIGINAL PROCEEDING; application for writ of mandate. Peremptory writ granted.

Kircher & Nakazato, Arthur Nakazato, Greenwald & Resnick, and Barnet Resnick for Petitioner.

No appearance for Respondent.

Jones, Bell, Simpson & Abbott, Eugene W. Bell, and Craig R. Bockman for Real Parties in Interest Dean Witter Reynolds, Inc. and Henry H. Duke.

Petitioner Billie Wederski seeks a writ of mandate ordering the superior court to vacate its order compelling arbitration.[1]

In December 1984, Wederski decided to buy some stock in Wespercorp, her employer. She had never purchased or sold securities before. She telephoned Roger Morrison, a stockbroker at Dean Witter Reynolds ("Dean Witter"). He purchased 1000 shares for her at a cost of $825 including commission.

Thereafter, Morrison telephoned Wederski once or twice a month seeking additional business, to no avail. However, in July 1985, Wederski received $695,000 from her mother's estate. She telephoned Morrison for advice, explaining she had quit her job and wanted to live off the income from the bequest. He told her he had an investment plan he would like to discuss with her.

Morrison met Wederski for the first time when he accompanied her to Modesto to retrieve the $695,000. His "no risk" investment plan involved U.S. Treasury obligations, the "safest investment you could make," using options to "hedge" the investment, with "no risk involved."

That evening, Wederski deposited the entire $695,000 with Dean Witter. Morrison asked her to sign several documents containing risk disclosures and arbitration provisions. Morrison told Wederski she needn't read the forms, as they were merely unimportant formalities required to open her investment account. Wederski signed the forms without reading them.

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[1]An order compelling arbitration is nonappealable; a writ of mandate is the appropriate remedy. (*Wheeler* v. *St. Joseph Hospital* (1977) 63 Cal.App. 3d 345, 353.)

The next day, August 9, 1985, Wederski met with Henry Duke, Morrison's supervisor at Dean Witter. They discussed her investment objectives, but Wederski claims neither Morrison nor Duke mentioned the arbitration clauses, or explained anything about the serious risks involved in option trading.

During the next seven months, Morrison allegedly "churned" the account, making 215 trades totalling over $26,000,000 in value. During this period, Wederski received weekly status reports which indicated her principal was intact, while in reality she was losing money rapidly.

In early March 1986, Wederski discovered Dean Witter had lost all her money. In fact, Dean Witter claimed she owed it $149,996 due to margin losses.

On May 2, 1986, Wederski filed suit against Dean Witter, Morrison, and Duke ("defendants"). Defendants moved to compel arbitration. The court granted the motion, and Wederski petitioned this court for a writ of mandate.

Main v. *Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1977) 67 Cal.App.3d 19 is directly on point.[2] The plaintiff in *Main*, an elderly and unsophisticated woman, opened an account with Merrill Lynch. She alleged Merrill Lynch had her sign documents, telling her they were unimportant formalities, when they were actually vital disclosure statements containing arbitration clauses. In determining whether the initial fraud question was subject to arbitration, the court held that "where it is alleged that fraud either induced the arbitration clause itself or

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[2]Like this case, *Main* involved interpretation of federal law, namely the Federal Arbitration Act (9 U.S.C. § 2, et seq.). Federal law applies to this case because it involves interstate securities transactions.

permeated the entire agreement including the arbitration clause, that issue will be determined judicially and not by arbitration." (*Id.*, at p. 27.) The court in *Main* found the complaint's fraud allegations were sufficient to preclude arbitration of the initial fraud question. (*Id.*, at pp. 27-29.)

The holding in *Main* was cited with approval in *Eriksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc.* v. *100 Oak Street* (1983) 35 Cal.3d 312. The question in *Eriksen* was whether an arbitration panel should decide "a party's claim that the underlying agreement (as distinguished from the agreement to arbitrate) was procured by fraud.[3] (*Id.*, at p. 316.) The court held that "claims of fraud in the inducement of the contract (as distinguished from claims of fraud directed to the arbitration clause itself) will be deemed subject to arbitration.[8]" (*Id.*, at p. 323.) However, footnote 8 in *Eriksen* states, "[a]s was observed in *Main* . . . fraud which 'permeate[s] the entire contract including the arbitration provision' vitiates the arbitration agreement and requires judicial determination. [Citations.]" (*Id.*, at p. 323, fn. 8.) Footnote 8 continues, stating that the permeation doctrine did not apply in *Eriksen* because the plaintiff was aware of the arbitration provision and the alleged fraud did not reach that portion of the contract. (*Ibid.*)

Main was again confirmed in *Ford* v. *Shearson Lehman American Express, Inc.* (1986) 180 Cal.App.3d 1011.[4]

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[3]*Eriksen* involved a lessee's allegations that its lessor procured the underlying lease through fraudulent representations. Although federal law was not directly involved, the court interpreted state law by reference to federal case law.

[4]Ford alleged Shearson conspired with his bookkeeper and therapist in a scheme to convert his stock portfolio to their personal use.

Ford reviewed the legal landscape, concluding that two groups of cases existed. The first group, exemplified by *Eriksen* and *Prima Paint Corp.* v. *Flood & Conklin Mfg. Co.* (1967) 388 U.S. 395, "do not present the type of fraud which goes to the making or procurement of a contract. Rather, these decisions deal with the type of fraud in the inducement of a contract which goes to performance under a contract [constituting] a 'disappointed expectation' concerning such performance." (*Ford* v. *Shearson Lehman American Express, Inc., supra,* 180 Cal.App.3d at P. 1022.) The second group, exemplified by *Main* and *Moseley* v. *Electronic Facilities* (1963) 374 U.S. 167, concern fraud which either procured the arbitration clause itself or which permeates the entire contract containing the arbitration clause. In such cases, "the determination of whether such fraud . . . ever occurred must be initially determined by a court and not by arbitration." (*Ford* v. *Shearson Lehman American Express, Inc., supra,* 180 Cal.App.3d at p. 1023.)

Here, Wederski's complaint alleged fraud induced her assent to *all* the brokerage documents. As in *Main,* Wederski alleges Dean Witter concealed the true nature and content of the documents it had her sign. The truth of her allegations must be determined judicially. "To allow this question to be decided by arbitrators would be to that extent to enforce the arbitration agreement even though steeped in the grossest kind of fraud." (*Moseley* v. *Electronic Facilities, supra,* 374 U.S. 167, conc. opn. of Warren, C.J., at p. 172.) The court therefore erred in ordering arbitration.

Let a peremptory writ of mandate issue (*Palma* v. *U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 182)

Shearson sought to enforce the arbitration provisions in contracts Ford claimed were procured by fraud.

directing respondent Orange County Superior Court to vacate its order compelling arbitration and to enter a new order denying defendants' motion.

NOT TO BE PUBLISHED

Trotter /s/

TROTTER, P. J.

We concur:

By Wallin /s/

WALLIN, J.

By Sonenshine /s/

SONENSHINE, J.

APPENDIX B

ORDER DENYING REVIEW

AFTER JUDGMENT BY THE COURT OF APPEAL
4th District, Division 3, No. G004574
S000983

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

WEDERSKI,
Petitioner,

v.

SUPERIOR COURT OF THE COUNTY OF ORANGE,
Respondent,
DEAN WITTER REYNOLDS, INC., et al.,
Real Parties in Interest.

Filed July 15, 1987.

Petition for review of Real Parties in Interest DENIED.

Panelli, J., is of the opinion the petition should be granted.

LUCAS
Chief Justice

APPENDIX C

STATUTES AND REGULATIONS INVOLVED

United States Arbitration Act

9 U.S.C. §2:

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

9 U.S.C. §3:

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

9 U.S.C. §4:

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of

the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

APPENDIX D

CUSTOMER'S AGREEMENT

Gentlemen:

In consideration of your accepting one or more accounts of the undersigned (whether designated by name, number or otherwise) and your agreeing to act as brokers for the undersigned in the purchase or sale of securities or commodities, the undersigned agrees as follows:

1. All transactions under this agreement shall be subject to the constitution, rules, regulations, customs and usages of the exchange or market, and its clearing house, if any, where the transactions are executed by you or your agents, and, where applicable, to the provisions of the Securities Exchange Act of 1934, the Commodities Exchange Act, and present and future acts amendatory thereof and supplemental thereto, and the rules and regulations of the Federal Securities and Exchange Commission, the Board of Governors of the Federal Reserve System and of the Secretary of Agriculture in so far as they may be applicable.

2. Whenever any statute shall be enacted which shall affect in any manner or be inconsistent with any of the provisions hereof, or whenever any rule or regulation shall be prescribed or promulgated by the New York Stock Exchange, the Federal Securities and Exchange Commission, the Board of Governors of the Federal Reserve System and/or the Secretary of Agriculture which shall affect in any manner or be inconsistent with any of the provisions hereof, the provisions of this agreement so affected shall be deemed modified or superseded, as the case may be, by such statute, rule or regulation, and all other provisions of the agreement and the provisions as so

modified or superseded, shall in all respects continue and be in full force and effect.

3. Except as herein otherwise expressly provided, no provision of this agreement shall in any respect be waived, altered, modified or amended unless such waiver, alteration, modification or amendment be committed to writing and signed by a member of your organization.

4. All monies, securities, commodities or other property which you may at any time be carrying for the undersigned or which may at any time be in your possession for any purpose, including safekeeping, shall be subject to a general lien for the discharge of all obligations of the undersigned to you, irrespective of whether or not you have made advances in connection with such securities, commodities or other property, and irrespective of the number of accounts the undersigned may have with you.

5. All securities and commodities or any other property, now or hereafter held by you, or carried by you for the undersigned (either individually or jointly with others), or deposited to secure the same, may from time to time and without notice to me, be carried in your general loans and may be pledged, re-pledged, hypothecated or re-hypothecated, separately or in common with other securities and commodities or any other property, for the sum due to you thereon or for a greater sum and without retaining in your possession and control for delivery a like amount of similar securities or commodities.

6. Debit balances of the accounts of the undersigned shall be charged with interest, in accordance with your usual custom, and with any increase in rates caused by

money market conditions, and with such other charges as you may make to cover your facilities and extra services.

7. You are hereby authorized, in your discretion, should the undersigned die or should you for any reason whatsoever deem it necessary for your protection, to sell any or all of the securities and commodities or other property which may be in your possession or which you may be carrying for the undersigned (either individually or jointly with others), or to buy in any securities, commodities or other property of which the account or accounts of the undersigned may be short, or cancel any outstanding orders in order to close out the account or accounts of the undersigned in whole or in part or in order to close out any commitment made in behalf of the undersigned. Such sale, purchase or cancellation may be made according to your judgment and may be made, at your discretion, on the exchange or other market where such business is then usually transacted, or at public auction or at private sale, without advertising the same and without notice to the undersigned or to the personal representatives of the undersigned, and without prior tender, demand or call of any kind upon the undersigned or upon the personal representatives of the undersigned, and you may purchase the whole or any part thereof free from any right of redemption, and the undersigned shall remain liable for any deficiency; it being understood that a prior tender, demand or call of any kind from you, or prior notice from you, of the time and place of such sale or purchase shall not be considered a waiver of your right to sell or buy any securities and/or commodities and/or other property held by you, or owed you by the undersigned, at any time as hereinbefore provided.

8. The undersigned will at all times maintain margins for said accounts, as required by you from time to time.

9. The undersigned undertakes, at any time upon your demand, to discharge obligations of the undersigned to you, or, in the event of a closing of any account of the undersigned in whole or in part, to pay you the deficiency, if any, and no oral agreement or instructions to the contrary shall be recognized or enforceable.

10. In case of the sale of any security, commodity, or other property by you at the direction of the undersigned and your inability to deliver the same to the purchaser by reason of failure of the undersigned to supply you therewith, then and in such event, the undersigned authorizes you to borrow any security, commodity, or other property necessary to make delivery thereof, and the undersigned hereby agrees to be responsible for any loss which you may sustain thereby and any premiums which you may be required to pay thereon, and for any loss which you may sustain by reason of your inability to borrow the security, commodity, or other property sold.

11. At any time and from time to time, in your discretion, you may without notice to the undersigned apply and/or transfer any or all monies, securities, commodities and/or other property of the undersigned interchangeably between any accounts of the undersigned (other than from Regulated Commodity Accounts).

12. It is understood and agreed that the undersigned, when placing with you any sell order for short account, will designate it as such and hereby authorizes you to mark such order as being "short", and when placing with you any order for long account, will designate it as such and hereby authorizes you to mark such order as being "long". Any sell order which the undersigned shall designate as being for long account as above provided, is for securities then owned by the undersigned and, if such securities are not then deliverable by you from any ac-

count of the undersigned, the placing of such order shall constitute a representation by the undersigned that it is impracticable for him then to deliver such securities to you but that he will deliver them as soon as it is possible for him to do so without undue inconvenience or expense.

13. In all transactions between you and the undersigned, the undersigned understands that you are acting as the brokers of the undersigned, except when you disclose to the undersigned in writing at or before the completion of a particular transaction that you are acting, with respect to such transaction, as dealers for your own account or as brokers for some other person.

14. Reports of the execution of orders and statements of the accounts of the undersigned shall be conclusive if not objected to in writing, the former within two days, and the latter within ten days, after forwarding by you to the undersigned by mail or otherwise.

15. Communications may be sent to the undersigned at the address of the undersigned given below, or at such other address as the undersigned may hereafter give you in writing, and all communications so sent, whether by mail, telegraph, messenger or otherwise, shall be deemed given to the undersigned personally, whether actually received or not.

16. Any controversy between you and the undersigned arising out of or relating to this contract or the breach thereof, shall be settled by arbitration, in accordance with the rules, then obtaining, of either the Arbitration Committee of the Chamber of Commerce of the State of New York, or the American Arbitration Association, or the Board of Arbitration of the New York Stock Exchange, as the undersigned may elect. If the undersigned does not make such election by registered mail addressed to you at

your main office within five (5) days after receipt of notification from you requesting such election, then the undersigned authorizes you to make such election in behalf of the undersigned. Any arbitration hereunder shall be before at least three arbitrators and the award of the arbitrators, or of a majority of them, shall be final, and judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

17. This agreement and its enforcement shall be governed by the laws of the State of New York and its provisions shall be continuous; shall cover individually and collectively all accounts which the undersigned may open or re-open with you, and shall enure to the benefit of your present organization, and any successor organization, irrespective of any change or changes at any time in the personnel thereof, for any cause whatsoever, and of the assigns of your present organization or any successor organization, and shall be binding upon the undersigned and/or the estate, executors, administrators and assigns of the undersigned.

18. The undersigned, if an individual, represents that the undersigned is of full age, that the undersigned is not an employee of any exchange, or of any corporation of which any exchange owns a majority of the capital stock, or of a member of any exchange, or of a member firm or member corporation registered on any exchange, or of a bank, trust company, insurance company or of any corporation, firm or individual engaged in the business of dealing, either as broker or as principal, in securities, bills of exchange, acceptances or other forms of commercial paper. The undersigned further represents that no one except the undersigned (and, to the extent community property stands in the account or accounts, his or her

spouse) has an interest in the account or accounts of the undersigned with you.

19. The undersigned acknowledges receipt of your statement of interest charges.

Dated, 8-8-85

Very truly yours,
Billie L. Wederski

CUSTOMER'S LOAN CONSENT

Until you receive written notice of revocation from the undersigned, you are hereby authorized to lend, to yourselves as brokers or to others, any securities held by you on margin for the account of, or under the control of, the undersigned.

Dated, 8-8-85

Very truly yours,
Billie L. Wederski

APPENDIX E

ACTIVE ASSETS ACCOUNT AGREEMENT

Note to clients of Active Assets Accounts for Businesses, Non-Profit Organizations and Institutions: Customers who are prohibited from trading on margin, please check the cash box to your right and circle which type of account you are opening.

☐ cash

Account Type (circle): Corporations, Partnerships, Sole Proprietorships, Foundations/Charitable, Custodian, Conservatorship/Guardianships, Estates and Trusts. Individuals must open a margin account.

I request that Dean Witter Reynolds Inc. ("you") accept an Active Assets Account in my name as it appears below. I understand that an Active Assets Account links three financial components: A margin Account ("Margin Account") — Part I of this Agreement; or a conventional cash brokerage account ("Cash Account") — Part 1A of this Agreement; (The Margin Account and the Account are collectively referred to as the "Securities Account"); a Visa check/card account ("Visa Account") with Bank One, Columbus, N.A. (the "Bank") — Part II of this Agreement; and a selection of one of three no-load money market funds ("Active Assets Trusts") or a Federal Savings & Loan Insurance Corporation ("FSLIC") insured Super-Now Account ("Active Assets Insured Account") at Sears Savings Bank ("SSB") — Part III of this Agreement.

In order to complete my application for an Active Assets Account with you, I am applying to the Bank for a Visa Account and request that the Bank provide checks ("Checks") and/or one or more cards ("Card") for use with my Visa Account. I understand that before you

accept my application to open an Active Assets Account, the Bank must accept my application to open a Visa Account. The Bank will notify me of such acceptance by providing me with Checks and/or issuing me a Card.

I acknowledge and agree that the Active Assets Account Agreement ("Agreement") sets forth the terms and conditions that will govern the Active Assets Account financial services to be provided to me. I understand that this Agreement includes the following: (1) My Margin Account Agreement and Customer's Loan Consent (Part I and Part IV, respectively) or if I open a Cash Account (Part IA and IV, respectively); (2) the Visa Account Agreement (Part II); and (3) I also understand that by signing this Agreement, I am acknowledging receipt of the Active Assets Trusts' Prospectus ("Prospectus") for the money market fund which I select as my primary fund and I understand that I will receive a separate disclosure document from SSB for the Active Assets Insured Account (Part III).

Part I. Margin Account Agreement

Purchase and Sales of Securities. You will open a margin account for me and will act as my broker, upon my instruction, to purchase or sell securities, including options, commodities, commodities futures, on margin or otherwise.

Security Interest and Liquidation. If at any time I should owe you any money for transactions in my Margin Account or any other account I may maintain with you, or for any loans you make for me, you will be entitled to a security interest on any money, securities or other property you hold for me to assure the repayment of my debt to you. If you feel you need to protect yourself in assuring payment of any of my indebtedness to you or to meet a

margin call, you may take any one or more of the following actions: (1) redeem shares I owe in any Active Assets Trust; (2) transfer securities or money from my Margin Account to any other account I maintain with you or transfer any securities, commodities or other property from any such other account to my Margin Account; and (3) sell securities or other property held in any of my accounts with you. You may also use the money in any of my accounts to satisfy my indebtedness to you. Before taking any action enumerated above, you will attempt to give me reasonable notice, but you will not be stopped from taking action if you have not notified me. You may also buy in any securities or other property that I am committed to deliver to you, or to cancel any outstanding orders in order to satisfy any commitment you may have made on my behalf.

You may make any such sale, purchase or cancellation according to your judgment and, in your discretion, on any exchange or in any market where such business is transacted, or at public auction or private sale. You may purchase the whole or any part of such securities or other property free from any right of redemption and I shall remain liable for any deficiency. All of the above may be done without demand for margin or notice of purchase or sale; any such notice or demand is expressly waived and no specific demand or notice shall invalidate this waiver.

Pledge. I understand that you may borrow money from banks to relend to your margin account customers, including me, and that you may pledge your customer's securities and other assets as collateral for such bank loans. I give you my permission to pledge my securities and other assets, together with assets of other margin account customers as collateral for your bank loans

whether or not I have outstanding any loans from you at that time.

Margin Maintenance — Charges. I will at all times maintain such collateral (called "margin") for my account(s) as you may require. I understand that any debit balances (money owed) in the account shall be charged interest in accordance with your house requirements which may be changed or modified at any time. At any time you demand, I will be reponsible and discharge my obligations and promptly pay you any debit balance that might arise due to the closing of my account.

Short Sales. Whenever I place with you any order to sell short a security in my account, which means to sell a security I do not own, I will designate it as a "short sale" order and authorize you to mark it as such. Whenever I place with you an order to sell securities I own, which is a "long" sale, I will designate it as such and authorize you to mark such order as being a "long sale". If for some reason the securities are not then deliverable by you from any of my accounts, I understand I am obligated to deliver them promptly to you.

In case you sell any securities or other property at my direction and are unable to deliver the same to the purchaser by reason of my failure to supply them to you, I authorize you to borrow any security or other property necessary to make such delivery. I also agree to be responsible to pay for any resulting loss to you and any premiums which you may be required to pay for such borrowing. Additionally, I will pay you for any loss which you may sustain by reason of your inability to borrow the security or other property I have sold.

Liability for Costs of Collection. I agree to pay you the reasonable costs and expenses of collection, including attorneys' fees, for any balance in my Margin Account.

I hereby consent and agree to all of the terms and conditions of the Agreement appearing above and as continued on the reverse hereof.

Billie L. Wederski — 8-8-85
Signature of Customer — Date

SIGNATURES: SPECIAL ACCOUNTS: FOR USE BY CORPORATIONS, PARTNERSHIP, SOLE PROPRIETORSHIPS, FOUNDATIONS/CHARITABLE, CUSTODIAN, CONSERVATORSHIP/GUARDIANSHIPS, ESTATES AND TRUSTS

The undersigned represents and warrants that he or she has the authority ("Authority Person") to open this Active Assets Account, to place assets in it and to use the Assets of the named organization in accordance with the required documentation that the undersigned has supplied to Dean Witter Reynolds Inc.

NOTICE: The Ohio laws against discrimination require that all creditors make credit equally available to all credit worthy customers and that credit reporting agencies maintain separate credit histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with this law.

CUSTOMER'S LOAN CONSENT

You are hereby authorized to lend, to yourselves as brokers or to others, any securities held by you on margin for me until you receive written notice of revocation signed by me.

Billie L. Wederski
Signature of Customer

8-8-85
Date

(If More Than One, All Principals to the Account Must Sign)

Date

Part IA. The Cash Account Agreement

For Corporations, Partnerships, Sole Proprietorships, Foundations/Charitable, Custodian, Conservatorship/Guardianships, Estates and Trusts.

Purchase and Sale of Securities. You will open a securities account for me and will act as my broker, upon my instructions, to purchase or sell securities including options on a cash basis.

Operation of a Cash Account within Active Assets Account. I understand that all transactions in my Active Assets Account will be on a cash basis. This means I will not be permitted to borrow funds from DWR against the securities in my account. I agree to the above because my corporate charter (or legal type of account) will not permit me to open a margin account.

I understand and agree that my available credit will be calculated on the aggregate amount of cash that is invested in my money market funds or, if applicable, the balance in my Active Assets Insured Account and any uninvested free credit balances in my account.

Should the above funds be insufficient to satisfy all money I owe on the Visa Account, the Bank may advance the balance as an overdraft and will impose a charge at an annual rate of up to 25% for the time such Visa Account is overdrawn, in accordance with Part II of this Agreement and the Terms and Conditions specified by the Bank. Any overdraft, including the charge, will be due and payable to the Bank immediately.

Part II. The Checking/Visa Account Agreement

Use of Checks/Cards. I may write Checks on the Visa Account and/or use the Card to make purchases of merchandise, services and to receive cash advances. I

agree that by signing, using or permitting another to use the Checks or Card, I will be bound by the Terms and Conditions provided to me by the Bank, as described below in this Part II.

Authorization Limit. The total amount available in my Visa Account ("Authorization Limit") will be the sum of (i) any uninvested free credit balances in my Account, (ii) the net asset value of my Trust shares, if any, and (iii) the available margin loan value (amount I can borrow from you) of any securities in my Account and, if any, the balance in Active Assets Insured Account at SSB. I understand that my Authorization Limit is dependent upon the clearance of the checks I deposited to the Securities Account, as well as the market value of my securities and the status of transactions in the Securities Account, Visa Account and Active Assets Insured Account. Because of the above variables, my Authorization Limit will fluctuate from day to day.

Payments. Whenever I use the Card to pay for merchandise or services, or to obtain a cash advance, I will sign a transaction draft, as evidence of the transaction, which will be forwarded to the Bank for payment. In addition, each time I write a Check against the Account, the Check will be forwarded to the Bank for payment. Unlike standard credit card account procedures where bills are rendered monthly, the Bank will notify you daily as to the amount of any Card or Check charges to the Visa Account received and paid by the Bank. You will promptly make payment to the Bank for me to the extent that sufficient funds can be provided: first, from any uninvested free credit balances in my Securities Account; second, from the proceeds of redemption of my available Trust shares or withdrawal from my Active Assets Insured Account, and third, if I maintain a Margin Account

and should such sources prove insufficient, from margin loans made by you for my account within the available margin loans of any securities in my Margin Account. If you do advance such monies, such amount will be a loan by you to me and will be collateralized by securities in my Margin Account. If you extend credit to me, interest will be charged from the day you make payment to the Bank on my behalf at the same rate you generally charge for margin loans.

Overdrafts. In the event a transaction exceeds my Authorization Limit, the Bank may accept such transaction as an overdraft on my Visa Account which will then become immediately due and payable to the Bank, with all interest due at a rate of 25% per annum for the period my Visa Account is overdrawn until paid in full.

Terms and Conditions. I understand that the Bank will send me a statement of the terms and conditions of the Visa Account ("Terms and Conditions") and that use of the Card and/or Checks will constitute my acceptance of and agreement to be bound by, such Terms and Conditions. I further understand that I may not use the Card and/or Checks until I receive the Terms and Conditions and I agree to notify the Bank in the event that I do not receive the same.

Part III. Investment Options
A. The Active Assets Trusts

Selection of Trust. When I open my Active Assets Account, I will designate one of three Active Assets Trusts as my primary fund. I acknowledge the receipt of a copy of the Trusts' Prospectus ("Prospectus") by signing this Agreement. A summary description of the components of the Active Assets Account Program and an

explanation of the Trusts operations accompanies the Prospectus.

Investments. Free credit balances in my Securities Account (that is, any cash that may be transfered out of the Securities Account without giving rise to interest charges) will automatically be invested in my designated Trust shares daily by means of a purchase offer submitted to the Trust by you in accordance with the terms of the Prospectus. The purchase price for Trust shares will be the net asset value per share next determined after a purchase order is entered with the Trust. A purchase order need not be entered until free credit balances or cash in the form of Federal funds becomes available to you. You may, however, without charge, advance Federal funds to the Trust on my behalf to enable me to purchase Trust shares and earn Trust dividends prior to final collection of checks deposited to my Securities Account. Also, you may reasonably withhold my access to redemption proceeds of Trust shares purchased with funds so advanced until you are satisfied that any and all checks deposited to my Securities Account have been collected.

Dividends. The Trust will declare dividends daily on Trust shares and will reinvest daily any such dividends in Trust shares. An investment in Trust shares is not equivalent to a bank deposit. As with any investment in securities, the value of my investment in Trust shares may fluctuate.

Shares. Trust shares will be maintained on the register of the Trust. Certificates will not be physically issued.

Redemptions. Trust shares will be redeemed at their net asset value. I agree that Trust Shares shall automatically be redeemed to satisfy debit balances in my Securities Account or amounts owing in my Visa Account.

B. Active Assets Insured Account

Active Assets Insured Account at Sears Savings Bank. When I open my Active Assets Account, I understand that I also have the option to place my cash balances in a FSLIC insured Super-Now account held on deposit at SSB instead of designating one of the three Active Assets Trusts as the vehicle for automatically investing my free credit balances in my account. I agree to allow and appoint Dean Witter Reynolds Inc. as my agent in any transactions with SSB. I understand and agree that the terms and conditions governing the Active Assets Insured Account, are set forth in a separate disclosure document which will be forwarded to me if I open an Active Assets Insured Account. I also agree to be bound by the terms and conditions of the Active Assets Insured Account.

Part IV. General

Fees and Charges. I will pay you an annual administrative fee, which is subject to change for the Active Assets Account program. In addition, I will pay you normal brokerage fees for transactions in the Securities Account. I will also pay the standard customer processing fee(s) for any stop payment order and for any Check returned for insufficient funds. I agree that you have the right to impose additional fees for special services in connection with the Active Assets Account. All such fees and charges shall be debited to my Securities Account. No fee, commission or other charge will be made with respect to the purchase or redemption of Trust shares. I understand you will receive a fee for acting as each Trusts investment manager and that you also will receive a fee from SSB for acting as my agent. In addition, I understand that you reserve the right to impose a monthly service charge to my Active Assets Account for Busi-

nesses, Non-Profit Organizations and Institutions if my portfolio asset value falls below $5,000.

Periodic Reports. Each month I will receive a transaction statement from you. This statement will detail all transactions in my Securities Account, margin interest charges, if any, the number of Trust shares purchased or redeemed for me, my Active Assets Insured Account balance and all purchases of merchandise and services and cash advances made with the Card and Checks. My cancelled Checks and Card transaction receipts will not be returned to me. Once a year, the amount of the annual fee for the Active Assets Account will be indicated on my monthly statement. I will carefully review each monthly statement after receipt and promptly notify you of any errors.

Arbitration of Controversies. Any controversy between you and me arising out of or relating to this Agreement, or any breach of the Agreement, shall be settled by arbitration in accordance with the rules of the Board of Arbitration of the New York Stock Exchange, the American Arbitration Association or any other industry association. Judgment upon the award rendered may be entered in any court, state or federal, having jurisdiction.

Representations. I represent to you that I have reached the age of majority in the State where I live. I also represent that I will inform you if I am or become an employee, principal or otherwise associated with any securities or commodities exchange or a member firm or their affiliate, or any bank, trust company, insurance company, or any brokerage firm or corporation, association or individual engaged in the business of dealing in securities or commodities or any forms of commercial paper.

Termination of Active Assets Account Program. I may terminate my Active Assets Account at any time. Of course, I will remain responsible for any charges to my Securities Account or Visa Account, whether arising before or after termination. You may terminate or place limitations on my Active Assets Account services which include my Securities Account checking or Visa privileges at any time in your discretion. If my Active Assets Account is terminated, either by you or me, I will promptly return all unused Checks and Card(s) to you. I understand that if I fail to return the Checks and Card(s) to you, it may result in a delay in complying with my instructions as to the disposition of assets in my Active Assets Account. Additionally, if my Active Assets Account is terminated you may, and I authorize you to, redeem all Trust shares owned by me for my account or to close my Active Assets Insured Account at SSB.

Communications. You may send communications to me at the mailing address specified on my application form or at such other form of address as I may designate in writing. All communications whether sent by mail, telegraph, messenger or otherwise, shall be deemed given to me personally, whether actually received or not.

Governing Law. Part I, IA and Part IV of this Agreement and its enforcement shall be governed by the laws of the State of New York, all accounts which I may open or re-open with you or SSB and shall be binding upon me and/or my estate, executors, administrators, successors and assigns.

Part II of this Agreement and the Terms and Conditions of the Visa Account shall be governed by the laws of the State of Ohio except to the extent that the laws of the State where I reside explicitly apply. The finance charge

under Part II of this Agreement shall be governed by the National Banking Act and the laws of the State of Ohio.

Joint/Individual Liability. If this is a joint account, each of us will be jointly and individually liable under all the provisions of this Agreement.

Interest Charges. I acknowledge receipt of your standard written "Statement of Margin Interest Charges and Other Terms and Conditions for Margin Accounts."

Waiver/Modification. Except as provided in this Agreement, no provision of the Agreement may be waived, altered, modified or amended unless in a writing signed by your authorized representative.

Separability. If any provision of this Agreement is held to be unenforceable, it shall not affect the validity of any of the remaining provisions.

Effectiveness of Agreement. This Agreement shall become effective upon acceptance by you and the Bank. You and the Bank reserve the right to reject this Agreement for any reason whatsoever.

DEAN WITTER REYNOLDS INC.
OPTION CLIENT INFORMATION

Personal and Financial Data
To be completed by the Customer(s)

☒ New Account ☐ Data Update

Date Completed *08/09/85*

Account No. *218-026156-03-049*

Full Account Title
Billie L. Wederski

Occupation (Indicate former occupation if retired.)
Manager ☐ Retired

Employer
WesperCorp

Spouse's Occupation (Indicate former occupation, if retired.) ☐ Retired

Spouse's Employer

Age ☐ Under 25 ☐ 25-39
☒ 40-50 ☐ 51-65 ☐ Over 65

Marital Status
☐ Single ☒ Married
☐ Widowed ☐ Divorced

No. of Dependents: 0

☒ New Account
☐ Established Relationship since 19____.

Type of Account
☒ Margin ☐ Cash

☐ Related to DWR Employee
If so, relationship:

Approximate Annual Income
(All Sources) *50M*

Approximate Net Worth
(Excluding Residence) *500M*

Approximate Liquid Net Worth
(Securities, Cash, etc.) *250M*
Current Acct. Equity
500M

Previous Investment Experience (Since what year?)

Stocks	Bonds	Options	Commodities
19____	19____	19____	19____

Bank Reference
Home S & L, Fort Valley, CA

Option Accounts with Other Firms:
Firm Name: Interest Rate _____
Since 19____
Type — ☐ Cash ☐ Margin
Firm Name: Equity _____
Since 19____
Type — ☐ Cash ☐ Margin

Third Party
☐ Power of Attorney
☐ Discretionary Authorization for DWR Employee
☐ Third Party Agreement on File
Name of Authorized Party:
Relationship:
Investment Experience:

Stocks	Options	Commod
19____	19____	19____

Objectives and Strategies
Investment Objectives
(Number in order of priority)
3 Income (Covered Call writing only)
1 Investment Hedge
2 Speculative Income
4 Speculation
5 Other: _____

Anticipated Types of Options Transactions

- ☐ Covered Call Writing Only
- ☐ Purchased Options
- ☐ Equal Quantity Spreads
- ☐ Uncovered Writing/Ratio Writing
- ☐ Put Writing (Full deposit of strike price)
- ☒ All Types of Option Trading

Customer Acknowledgement

I/We certify that the foregoing information is accurate and agree to advise you in writing of any changes in my/our financial situation and/or investment objectives. FURTHER, I/WE ACKNOWLEDGE RECEIPT OF A CURRENT OPTION CLEARING CORPORATION PROSPECTUS AND UNDERSTAND THE INFORMATION CONTAINED THEREIN. FURTHER, I/WE HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE PROVISIONS OF THE OPTION AGREEMENT ON THE REVERSE SIDE OF THIS FORM.

Client Signature: *Billie L. Wederski*

Date: *8/8/85*

Client Signature (if joint):

Date:

AE Approval

I have reviewed the foregoing information, that it is accurate to the best of my knowledge, and believe that the anticipated option trading is appropriate. Further, I have furnished a current Options Clearing Corporation Prospectus to the customer on (date): 8/8/85.

Account Executive — Print Name

R. Morrison

Signature: *R. Morrison*

Date: *8/9/85*

Branch Manager and ROP Approval

I have reviewed the foregoing and have

- ☒ APPROVED
- ☐ DISAPROVED the account for options trading
- ☒ AS NOTED ABOVE, or as follows:
- ☐ Covered Call Writing Only
- ☐ Purchasing Options
- ☐ Equal Qty. Spreads
- ☐ Uncovered Writing/Ratio Writing
- ☐ Put Writing (Full deposit of Strike Price)
- ☐ All Types

Branch Manager — Print Name

H. Duke

Signature: Date:

H. Duke *8/9/83*

Registered Options Principal — Print Name

Signature Date:

APPENDIX F

OPTIONS TRADING AGREEMENT

To Dean Witter Reynolds:

This letter is written to you in connection with puts, calls, and other forms of options which you may purchase, sell, exercise, or endorse for my account. I realize that options exchanges are intended to provide a secondary market where options positions can be liquidated at any time, but there is no guarantee that such liquidity will be consistently available. I further understand the risks of buying and selling options and that options are not for everybody and that their suitability is dependent upon the circumstances of the individual investor.

In consideration of your handling options transactions for my account, I agree that:

1. I will be bound by the constitutions, rules, regulations, customs, usages and by-laws of the Exchanges, Options Clearing Corporation, or other marketplace and their clearing house, if any, where transactions are executed.

2. I will not, acting alone or in concert with others, directly or indirectly, hold, control, or write in excess of the number of options contracts fixed from time to time by the exchanges or market as the position limit for one or more classes or series of options.

3. I will not exercise a long position in any option contract where, acting alone or in concert with others, directly or indirectly, I have or will have exercised in excess of the number of option contracts as may be fixed from time to time by the exchanges or market.

4. I hereby authorize you in your discretion, should I die or should you deem it necessary for your protection, to buy, sell, or sell short for my account and risk, puts, calls, or other forms of options and/or to buy, sell, or sell short any part or all of the underlying shares represented by options endorsed by you for my account. Any and all expenses incurred by you in connection with such transactions will be reimbursed by me.

5. All monies, securities or other property which you may hold in any account of mine shall be held subject to a general lien for the discharge of my obligations to you under this agreement.

6. Any controversy between us arising out of or relating to this agreement or the breach thereof, shall be settled by arbitration, in accordance with the rules, then obtaining, of either the American Arbitration Association, the Board of Arbitration of the New York Stock Exchange, the American Stock Exchange, the Chicago Board Options Exchange, or the National Association of Securities Dealers Inc. as I may elect. If I do not make such election by registered mail addressed to you at your main office within five (5) days after receipt of notification from you requesting such election, then I authorize you to make such election in my behalf.

7. This agreement and its enforcement shall be governed by the laws of the State of New York and its provisions shall be continuous: shall cover individually and collectively all accounts which I may open or re-open with you, and shall enure to the benefit of your present organization, and any successor organization, and of the assigns of your present organization or any successor organization, and shall be binding upon me and/or my estate, executors, administrators and assigns.

8. All other agreements existing between us or hereafter made, which, by their terms apply to all accounts of mine with you, shall be applicable to my options account or accounts where they are not in conflict with this agreement. Should a conflict exist it shall be resolved in favor of this agreement. Otherwise, the provisions of each agreement shall be applicable.

9. I am aware of your requirements and time limitations for accepting an exercise notice, and, at expiration date, I understand that I may not receive actual notice of an exercise until the week following.

10. I have been advised of your policies regarding margining of options and related transactions and agree to be bound thereby.

11. I understand and acknowledge that, when transactions on my behalf are to be executed in options traded in more than one marketplace, in the absence of my specific instructions, you may use your discretion in selecting the market in which to enter my order.

12. I recognize the fact that, in connection with option trading, situations arise whereby customers neglect to instruct their broker with respect to the disposition of expiring profitable options. If such options are allowed to expire they become worthless. These are commonly referred to as "abandoned options". In this connection, in order to avoid the loss to me in connection with expiring options I hereby authorize D.W.R., in its absolute discretion, to exercise any and all profitable options that are long in my account at the time of their expiration and, as to the disposition of which, I have not previously given D.W.R. contrary instructions. If D.W.R. elects to exercise this discretionary authority it is agreed that D.W.R. will attempt to advise me thereof on the first business day

following expiration. In the event D.W.R. is unable to contact me or in the event I do not enter contrary instructions, D.W.R. is hereby authorized to liquidate the securities credited to my account as a result of the exercise of the options and to credit my account in a fair and equitable manner after the deduction of a service charge. Under no circumstance will my account be debited with a loss as a result of such transactions.

13. I am aware that exercise assignment notices for option contracts are allocated among D.W.R. customer short positions pursuant to an automated procedure which randomly selects from among all customer short option positions, including positions established on the day of assignment, those contracts which are subject to exercise. All short option positions are liable for assignment at any time. I may request a more detailed description of your random allocation procedure at any time.

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On October 13, 1987, I served the within Petition for Writ of Certiorari in re: "Dean Witter Reynolds Inc. vs. Billie L. Wederksi" in the United States Supreme Court, October Term 1987, No. . . . .;

On the Parties in said action, by placing Three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Arthur Nakazato, Esq.
Kircher & Nakazato
811 W. 7th St., #1100
Los Angeles, CA 90017

Barnet Resnick, Esq.
Greenwald & Resnick
4350 Von Karman Ave., #450
Newport Beach, CA 92660

Michael M. Gless, Esq.
Keesal, Young & Logan
310 Golden Shore Drive
P.O Box 1730
Long Beach, CA 90801-1730

All Parties required to be served have been served.

I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on October 13, 1987, at Los Angeles, California

Ce Ce Medina

CE CE MEDINA

NO. 87-595

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

DEAN WITTER REYNOLDS, INC.
and HENRY DUKE
Petitioners,

vs.

BILLIE L. WEDERSKI,
Respondent.

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

ARTHUR NAKAZATO
Counsel of Record for Respondent

and

KIRCHER & NAKAZATO
811 West 7th Street, Suite 1100
Los Angeles, CA 90017
(213) 683-1377
Attorneys for Respondent

QUESTIONS PRESENTED

In respondent's view, the questions presented are:

(1) Whether respondent's allegations to the effect that her consent to the arbitration provision was induced by fraud constitute a proper ground for denial of a summary motion to compel arbitration and stay the proceedings;

(2) Whether the Court of Appeal's silence in its opinion as to how or whether the issue of fraudulent inducement of consent to the arbitration provision should be tried was contrary to some provision of the Federal Arbitration Act.

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NO. 87-595

IN THE SUPREME COURT OF THE UNITED STATES

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

JURISDICTION

As we discuss more fully below, there is no jurisdiction for the review of the interlocutory orders of the California Supreme Court and California Court of Appeal because the orders do not constitute a final judgment and no special

circumstances exist which would warrant an immediate appeal.

Further, to the extent petitioners claim that the Court of Appeal erred in not specifically ordering a separate summary trial of the threshold issue of fraudulent inducement, the Court of Appeal's silence on this subject does not amount to a final judgment.

STATEMENT OF THE CASE

In her complaint, plaintiff and respondent Billie L. Wederski (hereinafter "Mrs. Wederski") specifically alleges that the arbitration agreements were induced by fraud (Opp.App.A, page 9a). The factual allegations establishing that the arbitration agreements themselves, as well as the other agreements, were induced by fraud are set

forth in a section of the complaint entitled "Fraudulent Inducement of the Arbitration And Choice of Law 'Agreements'" (Opp. App.A, page 9a). Five separate paragraphs describing the nature and manner in which the defendants fraudulently induced Mrs. Wederski to sign the arbitration agreements are set forth in this section of the complaint (Opp. App.A, pages 11a-13a).

Petitioners moved the trial court to compel arbitration and stay the proceedings. Mrs. Wederski responded by filing an opposition. Her opposition was supported by a seventeen page declaration that she signed under penalty of perjury. Mrs. Wederski's declaration contains numerous factual allegations describing and supporting her allegations contained in her complaint alleging that the arbitration agreements were induced by fraud.

The trial court granted the petitioners' arbitration petition and motion to stay in spite of Mrs. Wederski's complaint and papers opposing the arbitration petition. Accordingly, Mrs. Wederski filed a petition for a peremptory writ of mandate in the first instance in the California Court of Appeal seeking an order directing the trial court to vacate its order and to deny the arbitration petition and stay.

On April 14, 1987, the California Court of Appeal filed its opinion granting Mrs. Wederski's peremptory writ. In reaching its decision, the California Court of Appeal determined she had sufficiently alleged that her assent to all of the brokerage documents was induced by fraud (Pet.App.A, page 5a). After the opinion of the Court of Appeal was issued, petitioners filed a petition

for rehearing in which they contended for the first time in the Court of Appeal that the Court should specifically order a separate trial of the issue of fraudulent inducement and that the permeation doctrine was in conflict with Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 400, 87 S.Ct. 1801, 1806, 18 L.Ed.2d 1270, 1277 (1967). The petition for rehearing was denied. The California Supreme Court subsequently denied petitioners' request for review (Pet. App.B).

ARGUMENT

The Petition should be denied forthwith since it is jurisdictionally and substantively defective. It is jurisdictionally defective in that it improperly requests this Court to review an un-

published interlocutory decision where none of the recognized special circumstances warranting immediate review are present.

The petition is also substantively defective in that it effectively requests the Court to depart from the express language of the Federal Arbitration Act, 9 U.S.C. §2, and its longstanding decision in Moseley v. Electronic Facilities, Inc., 374 U.S. 167, 83 S.Ct. 1815, 10 L.Ed.2d 818 (1963), the seminal case that the Court of Appeal relied upon.

I

THE PETITION SHOULD BE DENIED SINCE IT IS JURISDICTIONALLY DEFECTIVE

Preliminarily, the petition fails to meet the requirements for a writ of certiorari pursuant to 28 U.S.C. §1257(3)

because the decision below is not final and established exceptions to the finality requirement do not apply. Petitioners cite without discussion Southland Corp. v. Keating, 465 U.S. 1, 6-8, 104 S.Ct. 852, 856, 79 L.Ed.2d 1, 9-11 (1984) and Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 482-83, 95 S.Ct. 1029, 1039-1040, 43 L.Ed.2d 328, 341-342 (1975) in support of their contention that jurisdiction exists. In these two cases, jurisdiction was predicated upon 28 U.S.C. §1257(2) which, unlike 28 U.S.C. §1257(3), permits an appeal as of right. The Court observed in each case that unless an immediate appeal could be taken, the State Supreme Court decisions in question might remain unchallenged because the party seeking review might subsequently prevail on the merits, rendering the federal issues moot, and

the unreviewed state decisions might lead to a "serious erosion of federal policy." Id.

In the present case, there is no comparable danger that letting the decision of the state's highest court stand might erode federal policy. Both the Court of Appeal decision and the order of the California Supreme Court denying review are unpublished and therefore not only lack precedential value, but are effectively unknown to all but the litigants. The Court of Appeal opinion therefore will have an effect only upon the parties to the action.

Petitioners also seek review of the Court of Appeal's purported refusal to order a separate trial of the issue of fraudulent inducement. In the proceedings below, neither the trial court nor the appellate courts ruled on this issue

nor was any such ruling necessary to their decisions, and, thus, not only is there no final judgment from which an appeal can be taken, there simply is no judgment at all on this question. Indeed, the issue was not raised in the Court of Appeal by petitioners until they filed their petition for rehearing. Nothing in the opinion of the Court of Appeal or the order of the California Supreme Court purports to decide the question of whether petitioners are entitled to a separate trial of the issue of fraudulent inducement. The Court of Appeal decided only that the court below improperly ordered the matter submitted to arbitration and the proceedings stayed.

II

THE PETITION SHOULD BE DENIED SINCE THE THE THRESHOLD QUESTION OF WHETHER THE ARBITRATION AGREEMENTS WERE INDUCED BY FRAUD MUST BE DECIDED BY THE COURTS

Even if jurisdiction did exist under 28 U.S.C. §1257(3), the petition should nevertheless be denied.

This Court has repeatedly recognized that Section 2 of the FAA expressly provides that arbitration agreements are subject to revocation on such grounds as exist at law or in equity for the revocation of any contract. 9 U.S.C. §2 and see Moseley v. Electronics Facilities, Inc., supra, 374 U.S. at 170-171, 83 S.Ct. at 1817-1818, 10 L.Ed.2d at 821 (1963); Prima Paint Corp. v. Flood & Conklin Mfg. Co., supra, 388 U.S. at 400, 87 S.Ct. at 1806, 18 L.Ed.2d at 1277 (1967); Southland Corp. v. Keating, 465 U.S., supra, 465 U.S. at 10, 104 S.Ct. at

858, 79 L.Ed.2d at 12 (1984); and Shearson American Express, Inc. v. McMahon, 482 U.S. ___, ___, 107 S.Ct. 2332, 2337, 96 L.Ed.2d 185, 194 (1987).

In Moseley, this Court held that the question of fraud in the inducement of the arbitration agreement is a question that must initially be decided by the federal district courts rather than arbitrators. 374 U.S. at 170-172, 83 S.Ct. at 1817-1818, 10 L.Ed.2d at 821. As Chief Justice Warren and Justice Black noted in their concurring opinion: "[t]o allow this question to be decided by arbitrators would be to that extent to enforce the arbitration agreement even though steeped in the grossest kind of fraud." 374 U.S. at 172, 83 S.Ct. at 1818, 10 L.Ed.2d at 822. There, as here, the party's pleadings opposing arbitration "attacked not only the [contracts],

but also the arbitration clauses contained therein, as having been procured through fraud." 374 U.S. at 170-172, 83 S.Ct. at 1817, 10 L.Ed.2d at 821.

Four years later in Prima Paint, the case petitioners claim the California Court of Appeal's decision conflicts with, this Court held:

> [I]f the claim is fraud in the inducement of the arbitration clause itself - an issue which goes to the "making" of the agreement to arbitrate - the federal court may proceed to adjudicate it.

388 U.S. at 403-404, 87 S.Ct. at 1806, 18 L.Ed.2d at 1277. In the footnote that immediately follows the aforementioned quote, the Court emphasized its holding is consistent with Moseley and the FAA's statutory scheme, particularly with Section 2's "savings clause" which makes "arbitration agreements as enforceable as

other contracts, but not more so." Id., fn.12. The Court further noted:

> To immunize an arbitration agreement from judicial challenge on the ground of fraud in the inducement would be to elevate it over other forms of contract - a situation inconsistent with the 'savings clause.'"

Id. The Prima Paint majority also emphasized that Prima Paint, unlike Mrs. Wederski, never claimed that the party seeking to enforce the arbitration agreements "fraudulently induced it to enter into the agreement to arbitrate...." 388 U.S. at 406, 87 S.Ct. at 1807, 18 L.Ed.2d at 1278-1279.

Just last term, in Shearson American Express, Inc. v. McMahon, supra, this Court also emphasized that "a well-founded claim" that an arbitration agreement was legally or equitably unenforceable should initially be decided

by the federal district courts in connection with federal securities claims. 482 U.S. at 107 S.Ct. at 2337, 96 L.Ed.2d at 194. See also Rush v. Oppenheimer & Co., Inc., ___ F.Supp.___, CCH FED.SEC.RPTR., Current Transfer Binder, ¶93,406 at page 97,117 (S.D.N.Y. 1987).

Prima Paint involved a matter brought in federal court and its express holding reflects it is strictly limited to federal courts. Nonetheless, it appears its principles are now applicable to state courts as well based on the Court's majority holding in Southland Corp. v. Keating, 465 U.S. at 12, 104 S.Ct. at 859, 79 L.Ed.2d at 13.

Applying the foregoing principles to the pending case, it is clear that the petition should be denied on substantive grounds since Mrs. Wederski's complaint

expressly alleges that the petitioners fraudulently induced her to sign the arbitration agreements. As noted above, Mrs. Wederski's complaint contains a separate section entitled "Fraudulent Inducement of the Arbitration And Choice of Law 'Agreements'"; this section sets forth numerous factual allegations attacking the arbitration agreements themselves on the grounds that they were induced by fraud (Opp.App.A, pages 11a-13a). Accordingly, petitioners' accusation that Mrs. Wederski's complaint contains "no allegation that the arbitration provision itself was induced by fraud (Pet., page i) is itself false and grossly misleading.

III

THE CALIFORNIA COURT OF APPEAL'S DECISION DOES NOT CONFLICT WITH PRIMA PAINT

The California Court of Appeal based its decision on its express finding that Mrs. Wederski's complaint had sufficiently alleged fraud induced her assent to all of the brokerage documents (Pet. App.A, page 5a). In order to have made this finding, the Court of Appeal had to determine that the complaint expressly alleged that the arbitration agreements themselves were induced by fraud. A review of Mrs. Wederski's complaint confirms that she did in fact specifically allege that the arbitration agreements themselves were induced by fraud. Therefore, the California Court of Appeal's holding does not conflict with Prima Paint.

IV

THE PERMEATION DOCTRINE DOES NOT CONFLICT WITH THIS COURT'S PRIOR DECISIONS

Petitioners' contention that the permeation doctrine is a creature of state law that conflicts with this Court's decision in Prima Paint is equally misplaced.

An examination of Main v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 67 Cal.App.3d 19, 136 Cal.Rptr. 378 (1977), the state case that the California Court of Appeal followed, confirms that its holding is based on this Court's holdings in Moseley and Prima Paint; it also reveals the so-called permeation doctrine is nothing more than a shortened restatement of this Court's holdings in Moseley.

Specifically, in Main, the California Court of Appeal held:

> [W]here it is alleged that fraud either induced the arbitration clause itself or permeated the entire agreement including the arbitration clause, that issue will be determined judicially and not by arbitration (emphasis added).

Main, 67 Cal.App.3d at 27.

In Moseley, this Court held:

> Petitioner attacks the subcontracts, as well as the arbitration agreement, as being fraudulent, and this issue, we conclude, must be first determined by the District Court.

374 U.S. at 169, 83 S.Ct. at 1816, 10 L.Ed.2d at 820.

Based upon the foregoing, it should be clear that the permeation doctrine is a restatement of Moseley. There is no substantive difference between alleging that all of the agreements, as well as the arbitration agreements, were induced by fraud (Moseley) and, on the other

hand, alleging that fraud permeated all of the agreements, including the arbitration clauses (Main).

Thus, the contention that the permeation doctrine conflicts with federal law is incorrect; on the contrary, it is a concept of federal substantive law that restates this Court's holding in Moseley.

V

THE COURT OF APPEAL'S SILENCE ON THE ON THE ISSUE OF A SUMMARY TRIAL WAS NOT ERROR

Petitioners argue that the Court of Appeal "refused to order a summary trial of the issue" of fraud in the making of the agreement to arbitrate. (Pet., page 12) In fact, the Court of Appeal did not address this question since the issue was not necessary to its decision and none of the parties to the appeal had discussed

it in their memoranda. The Court of Appeal said only that "[t]he truth of her [Mrs. Wederski's] allegations must be determined judicially" without commenting further upon the means by which the truth should be determined (Pet.App.A, page 5a). There is no inconsistency between the Court of Appeal's decision and the requirements of the Federal Arbitration Act.

CONCLUSION

For the reasons stated above, respondent and plaintiff Billie L. Wederski respectfully submits that the petition for a writ of certiorari of petitioners and defendants Dean Witter Reynolds, Inc.

and Henry H. Duke should be denied forthwith.

Dated: November 10, 1987

Respectfully submitted,

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Counsel of Record For
Respondent

and

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APPENDIX A

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Attorneys for Plaintiff
Billie L. Wederski

SUPERIOR COURT OF THE STATE OF

CALIFORNIA FOR THE COUNTY

OF ORANGE

BILLIE L. WEDERSKI, Plaintiff, v. DEAN WITTER REYNOLDS, INC. a corporation; ROGER MORRISON, an individual; HENRY H. DUKE, an individual; and DOES 1 through 10, inclusive, Defendants.	COMPLAINT FOR: 1. BREACH OF FIDUCIARY DUTIES; 2. FRAUD AND DECEIT; 3. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS; AND 4. NEGLIGENCE AND GROSS NELIGENCE

PLAINTIFF BILLIE L. WEDERSKI ALLEGES AS FOLLOWS:

Common Allegations

1. Plaintiff Billie L. Wederski ("Plaintiff") is an individual residing in the County of Orange, California.

2. Defendant Dean Witter Reynolds, Inc. ("Dean Witter") is a corporation organized and existing under the laws of the State of Delaware and, at all times relevant hereto, was a registered broker-dealer authorized to transact business as a securities broker in the State of California and maintaining a branch office at 7088 Edinger Avenue, Huntington Beach, California ("Dean Witter's Huntington Beach Office").

3. Defendant Roger Morrison ("Morrison") is an individual believed to

be residing in the County of Orange, State of California. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant hereto, Morrison was and is now a registered representative and employed as an account executive and investment advisor at Dean Witter's Huntington Beach Office and was and is now active in his capacity as a managing agent of Dean Witter and/or and acting within the course and scope of his employment with Dean Witter.

4. Defendant Henry H. Duke ("Duke") is an individual believed to be residing in the County of Orange, State of California. Plaintiff is informed and believes, and on that basis alleges, that at all relevant times hereto, Duke was and is now a registered representative and employed as a Vice-president of

investments and stockbroker at Dean Witter's Huntington Beach Office and was and is now active in his capacity as a managing agent of Dean Witter and/or acting within the course and scope of his employment with Dean Witter.

5. The true names and capacities of defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff, therefore, Plaintiff sues said DOE defendants by such fictitious names. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant thereto, each of said DOE defendants participated in the acts set forth below and are responsible to the Plaintiff for the damages hereinafter set forth.

6. Plaintiff is informed and believes, and on that basis alleges, that at all times relevant hereto, Dean

Witter, Morrison, Duke and DOES 1 through 10, inclusive, were agents, servants, and employees of each other, and in doing the things hereinafter alleged, each of said defendants acting within the scope of his, her, or its authority as an agent, servant, and employee of the other defendants and with the permission and consent of such other defendants.

7. Defendant Dean Witter, at all times relevant hereto, authorized, approved or ratified all of the acts committed by Morrison, Duke, all DOE defendants and its other agents, servants and employees, and each of them, as alleged herein.

FIRST CLAIM FOR RELIEF

(Breach of Fiduciary Duty)

(Against All Defendants)

8. Plaintiff hereby incorporates by reference paragraphs 1 through 7, inclusive, above as though fully set forth at this place.

Creation and Acceptance of Fiduciary Relationship Between Plaintiff and Defendants

9. On or before November 30, 1984, Plaintiff opened an account with Dean Witter after speaking with Morrison (the "1984 November Meeting").

10. During the 1984 November Meeting, and continuously therafter, Dean Witter, by and through Morrison and/or Duke, expressly or impliedly represented

to Plaintiff that each of the defendants were reputable, experienced stock brokers and investment advisors that could and would provide Plaintiff with proper investment advice and counseling.

11. Plaintiff was impressed with said defendants' sincerity and apparent expertise and said defendants immediately gained Plaintiff's trust and confidence. The defendants, and each of them, knew or should have known Plaintiff reposed her trust and confidence in the defendants when she asked the defendants, and they agreed, to act as her stockbrokers and investment advisors and each of the defendants thereupon knew and understood a fiduciary relationship between Plaintiff and each of the defendants existed.

12. During and after the 1984 November Meeting, Plaintiff disclosed

confidential information about her personal and financial background based upon (a) the great trust and confidence she reposed in each of the defendants, (b) each defendants' understanding that they were to act as her stockbrokers and investment advisors, and (c) each defendants' understanding that Plaintiff believed the defendants would deal fairly and justly with Plaintiff in all respects. Each of the defendants knew and understood Plaintiff felt secure in seeking advice from, and entrusting her investment affairs to, each of the defendants.

Fraudulent Inducement of the
Arbitration And Choice of Law
"Agreements"

13. Plaintiff does not have, and the defendants have never given Plaintiff, a copy of any papers the defendants instructed her to sign. Plaintiff is now informed and believes, and on that basis alleges, that some of the papers the defendants induced her to sign may contain an arbitration clause and provision stating all legal rights and obligations shall be governed under the laws of New York rather than the laws of California ("choice of law provision").

14. Plaintiff is informed and believes, and on that basis alleges, that defendants will attempt to force her to arbitrate all of her claims against each of the defendants alleged herein and

attempt to apply the laws of the State of New York to all questions of law and fact.

15. Each of the defendants knew Plaintiff lacked investment experience, knew Plaintiff was unfamiliar with legal terms and concepts, particularly the laws of New York or California, knew Plaintiff never engaged in securities transactions, and knew Plaintiff had never maintained a securities account with any broker-dealer of securities before opening the Dean Witter Account. Nonetheless, and during the course of said defendants' fiduciary relationship with the Plaintiff, Dean Witter, by and through Morrison and/or Duke, made the following misrepresentations, fraudulently concealed, and/or omitted to fully disclose or fully explain the following material facts relating to provisions which Plaintiff is

informed and believes, and on that basis alleges, are contained in papers drafted by the defendants and which the defendants fraudulently induced and instructed her to sign sometime between November of 1984 up through the present:

(a) falsely represented that the papers were merely a formality and the sole purpose of the papers was to permit Plaintiff to open an account with Dean Witter;

(b) fraudulently concealed and/or failed to fully disclose or fully explain that the papers contained an arbitration clause and that, by signing the papers, Plaintiff would be, among other things, waiving her Constitutional right to a jury trial, effectively waiving her right to discovery and waiving her right to any meaningful appeal;

(c) fraudulently concealed and/or failed to fully disclose or fully explain that Dean Witter prefers arbitration over a jury trial in disputes with its customers and recognizes arbitration to be an advantage since the arbitration panels cannot award punitive damages under the laws of New York, and alternatively, arbitration panels rarely, if ever, award punitive damages against broker-dealers under California law even though the broker-dealers engaged in acts or practices that normally justify, and result in, an award of punitive damages in a jury trial;

(d) fraudulently concealed and/or failed to fully disclose or fully explain that in disputes or controversies between broker-dealers and its California customers, New York

laws provide less rights and protection than California law;

(e) fraudulently concealed and/or failed to disclose or fully explain that by signing the papers, defendants would execute transactions in Plaintiff's account without her prior authorization or consent.

16. Plaintiff believed the only purpose of the papers the defendants instructed her to sign was to effect the opening of an account with Dean Witter; Plaintiff never understood or agreed to (a) waive or relinquish her constitutional right to a jury trial before her peers (b) submit any controversies or disputes to arbitration, or (c) waive or relinquish her right to have all questions regarding her legal rights or disputes with defendants governed and controlled by California law rather than New York

law.

17. Due to the confidential and fiduciary relationship, and the trust and confidence Plaintiff reposed in said defendants, Plaintiff signed the papers as instructed by defendants and without reviewing the papers questioning the defendants about the contents. Had defendants fully disclosed and fully explained to Plaintiff the true nature and content of the papers, particularly the inclusion of the arbitration and choice of law clauses and the clauses' nature, meaning and effect on Plaintiff's right to, among other things, a jury trial and/or the differences in Plaintiff's legal rights, Plaintiff would have never signed any of the defendants' papers nor would have opened an account with Dean Witter, never waived her rights under California law, never agreed to

arbitration, and never entrusted the defendants with investing any part of the $694,640.65 in proceeds resulting from the sale of the land that she inherited from her mother as more fully explained below.

Additional Misrepresentations and Omissions

18. Shortly before August 5, 1985, Plaintiff learned that she would soon receive $694,640.65 from the sale of the land she recently inherited from her mother (the "inheritance proceeds").

19. On or about August 6, 1985, Plaintiff notified defendants Dean Witter and Morrison about the inheritance and sought their advice about investing the inheritance proceeds since Plaintiff lacked the skills, experience and

expertise to invest and manage such a large sum of money. Upon learning about the enormous sum of money Plaintiff would be receiving, Dean Witter, by and through Morrison, urged Plaintiff to speak with said defendants immediately about an appropriate manner to invest the inheritance proceeds.

20. On August 8, 1985, and based upon Dean Witter's urgings made by and through Morrison, Plaintiff invited Dean Witter, by and through Morrison, to accompany her to Modesto, California for the purpose of picking up the inheritance proceeds and advising her about a safe and suitable manner of investing the inheritance proceeds (the "Modesto trip").

21. During the Modesto trip, Plaintiff advised Dean Witter, by and through Morrison, that she had quit

working upon learning that the land she had inherited would soon be sold for $694,640.65. Accordingly, Plaintiff advised Dean Witter, by and through Morrison, and Dean Witter and Morrison understood, that Plaintiff's investment goal was to acquire conservative, fixed income investments that would produce sufficient income to meet Plaintiff's living expenses without using the principal amount of the inheritance proceeds. Moveover, Plaintiff also sought Dean Witter's advice, by and through Morrison, regarding a safe and suitable manner of investing, or placing in trust, about $428,000 of the inheritance proceeds to pay for estate taxes.

22. During the Modesto trip, Dean Witter, by and through Morrison, and with Duke's approval, made the following

express or implied representations, among others, which were designed to, and did, induce Plaintiff to repose further trust and confidence in each of the defendants' purported investment skills and induced Plaintiff to deposit the entire $694,640.65 of the inheritance proceeds in Plaintiff's account with Dean Witter:

(a) That the $428,000 Plaintiff owed for estate taxes on the inheritance proceeds would be set aside and deposited into a money market similar type of account and would not be used for other investment purposes;

(b) That said defendants would use a conservative, low-risk manner of investing the balance of Plaintiff's inheritance proceeds by acquiring a well-diversified portfolio of United States Treasury bonds and

conservative, low-risk equity stocks suitable for generating fixed income to meet Plaintiff's living expenses;

(c) That the investment strategy the defendants would employ would also enable the Plaintiff to meet her living expenses without having to withdraw or use the principal balance of the inheritance proceeds;

(d) That no transactions would be made in Plaintiff's account without her prior knowledge and authorization;

(e) That Plaintiff's account would constantly be monitored and supervised by Dean Witter, by and through Morrison and Duke, for any irregular, excessive or unauthorized transactions and that each of the defendants would provide Plaintiff

with accurate, complete and current reports relating to all transactions and the net equity in Plaintiff's account;

(e) That each of the defendants would always disclose and/or fully explain all material facts relating to Plaintiff's account and any matters relating to investments in Plaintiff's account;

(f) That each of the defendants would always place Plaintiff's best interests ahead of those the defendants and would not take advantage of the trust and confidence Plaintiff reposed in each of the defendants; and

(g) That each of the defendants would manage or supervise Plaintiff's account in a manner consistent with all applicable laws,

rules and regulations pertaining to stockbrokers and/or investment advisors.

23. The foregoing representations of defendants Dean Witter and Morrison were in fact false. The true facts, among others, were:

(a) That none of the defendants would set aside an appropriate amount for estate taxes and would use Plaintiff's full inheritance proceeds to, among other things, write uncovered or "naked" options contracts, execute commodities and futures transactions; all of which are extremely complex, risky investment strategies that would and did expose Plaintiff to financial liabilities and losses in excess of the full inheritance proceeds;

(b) That between August 9, 1985 and approximately March 19, 1986, ("the trading period"), nearly seven months, each defendant would churn Plaintiff's account by engaging in an excess of 215 transactions (about 30 transactions a month) and executed over $26,900,000 of purchase and sale transactions primarily for the benefit of generating commissions and profits for defendants;

(c) That each defendant would and did make excessive and unauthorized transactions;

(d) That each defendant would and did employ various unauthorized and risky investment strategies that were neither safe nor suitable given Plaintiff's financial condition and stated investment objective of fixed income;

(e) That each defendant would and did use Plaintiff's full inheritance in order to (1) cover the unauthorized and/or excessive naked options contracts and (2) leverage Plaintiff's buying power for purposes of generating margin interest charges against Plaintiff's account;

(f) That each defendant would and did place their own best interests ahead of Plaintiff's by engaging in a variety of unauthorized, excessive or risky transactions or investments or investment strategies that were primarily designed to generate commissions and profits for the defendants;

(g) That each defendant would and did sell securities to Plaintiff without disclosing or explaining that Dean Witter was making

a market in said securities before executing purchase orders for the securities and concealed the fact that defendants' commissions or profits were already factored into the price per share of said securities;

(h) That each defendant would and did send Plaintiff inaccurate and misleading periodic account reports that were designed to and did conceal the nature and extent of Plaintiff's losses and/or defendants' commissions or interest charges and falsely represented, among other things, that at all times during the trading period, the net equity in Plaintiff's account always exceeded the original amount of Plaintiff's inheritance proceeds;

(i) That none of the defendants would properly manage or

supervise all transactions in Plaintiff's account and would actually conceal the lack of supervision or proper management of Plaintiff's account by generating various inaccurate and the misleading periodic account reports prepared by Morrison, and approved on Duke, on behalf of Dean Witter;

(j) That defendants would not disclose or fully explain all risks or material facts relating to Plaintiff's account or transactions relating to Plaintiff's account; and

(k) That defendants would not manage or supervise Plaintiff's account in a manner consistent with all applicable laws, rules or regulations pertaining to stockbrokers or investment advisors.

24. In direct reliance on defendants' foregoing representations, and based upon Plaintiff's full trust and confidence in said defendants, Plaintiff was induced to, and did, entrust all of the inheritance proceeds to Dean Witter for the purpose of investing and managing the inheritance proceeds in a manner consistent with Plaintiff's aforementioned stated investment objective and investment concerns. During the evening of August 8, 1985, and immediately after returning from the Modesto trip, Plaintiff endorsed the check in the full amount of the inheritance proceeds to defendant Dean Witter and gave it to Dean Witter, by and through Morrison, to take home and deposit into Plaintiff's Dean Witter account the next day.

25. At all times mentioned hereinabove, each of the defendants

maintained a fiduciary relationship with Plaintiff, and each of the defendants had a fiduciary duty to (a) act in the highest good faith toward Plaintiff; (b) fully disclose and fully explain all material facts affecting Plaintiff's rights and interests; (c) not take advantage of trust and confidence Plaintiff's reposed in the defendants; and (d) place Plaintiff's best interests ahead of the interests of the defendants, and each of them.

26. Despite having voluntarily accepted the Plaintiffs trust and confidence reposed in each of them, said defendants committed a breach of their respective fiduciary duties owed to Plaintiff by engaging in the acts or conducts set forth above.

27. Plaintiff's reliance on the foregoing representations of the defen-

dants was justified inasmuch as defendants represented each of them were experienced, well-qualified, reputable stockbrokers and investment advisors and represented that each of them would act in a manner consistent with their respective fiduciary obligations and duties to Plaintiff.

28. Had defendants fully disclosed and fully explained the true facts to Plaintiff, Plaintiff would have never opened any account with Dean Witter, never signed any papers presented to her by Dean Witter or the other defendants, and never would have entrusted any part of the inheritance proceeds with any of the defendants.

29. As a direct and proximate result of the aforementioned acts and conduct of each of the defendants, Plaintiff has suffered compensatory

damages in an amount not yet ascertained, but which are presently estimated to exceed $850,000 and consisting of commissions charges, interest charges and losses due to unauthorized and/or excessive transactions. Furthermore, Plaintiff may incur additional losses in excess of $428,000 which represent the amount of estate taxes owed on the inheritance proceeds.

30. In doing the acts herein alleged, each of the defendants acted with oppression, fraud, and malice, and Plaintiff is entitled to punitive damages in the sum of at least $8,500,000 dollars inasmuch as Plaintiff is informed and believes, and on that basis alleges that, at all relevant times hereto, Dean Witter Morrison and Duke, and each of them:

(a) Knew Plaintiff was an unsophisticated investor and had

entrusted her entire inheritance proceeds with said defendants;

(b) Knew that said defendants gave Plaintiff improper investment advice and/or inaccurate account information that was primarily designed to cover up Plaintiff's losses the defendant's commissions and profits and the defendants' mishandling of Plaintiff's account;

(d) Knew that defendants were engaging in unauthorized, excessive and unsuitable transactions in Plaintiff's account and that such conduct constituted, among other things, fraud and/or a breach of their fiduciary duties to Plaintiff; and

(e) Knew that some or all of the foregoing acts, among other things, were improper and/or violated various laws, rules or regulations pertaining

to stockbrokers and investment advisors;

(f) Willfully elected to engage in such conduct as a risk of doing business since Dean Witter's experience is that the number of customers that actually institute legal proceedings after their accounts are mishandled, and the legal fees and costs of defending such claims or proceedings, are insignificant relative to the actual or potential revenues generated from such wrongful conduct, particularly if Dean Witter succeeds in avoiding a jury trial and punitive damages by way of the arbitration clause and choice of law provision.

SECOND CLAIM FOR RELIEF

(Fraud and Deceit)

(Against All Defendants)

31. Plaintiff hereby incorporates by reference paragraphs 1 through 30, above, as though fully set forth at this place.

32. Plaintiff is informed and believes, and on that basis alleges, that at the time of making the aforementioned misrepresentations or omissions of material facts, each of the defendants knew the misrepresentations or omissions of material facts were false and misleading. Plaintiff is informed and believes, and on that basis alleges, that the foregoing misrepresentations or omissions of material facts were made by each of the defendants with the intent to defraud and deceive Plaintiff and with the intent to

induce Plaintiff to rely on the foregoing misrepresentations and omissions to her detriment.

33. Plaintiff, at the times the misrepresentations and omissions set forth hereinabove, were made by Dean Witter, by and through Morrison and Duke, and at the time Plaintiff took the actions herein alleged, was ignorant of the falsity of said misrepresentations or omissions and believed them to be true.

34. As a direct and proximate result of the aforementioned fraud and deceit committed by defendants Dean Witter, Morrison and Duke, and each of them, Plaintiff has suffered compensatory damages in an amount not yet ascertained, but which are presently estimated to exceed $850,000 and consisting of commissions charges, interest charges and

losses due to unauthorized and/or excessive transactions.

THIRD CLAIM FOR RELIEF

(Negligent Infliction of Severe Emotional Distress)

(Against All Defendants)

35. Plaintiffs hereby incorporated by this reference the allegations of paragraphs 1 through 30, inclusive, above, as though fully set forth at this place.

36. The aforementioned acts and conduct of defendants, and each of them, were, among other things, negligent.

37. As a direct and proximate result of said defendants' aforementioned negligent acts and/or conduct, Plaintiff has suffered humiliation, mental anguish, severe emotional distress, and mental

distress, and has otherwise been injured in mind, body and/or spirit and has suffered damages in an amount not yet ascertained but which is in excess of $850,000.

FOURTH CLAIM FOR RELIEF

(Negligence and Gross Negligence)

38. Plaintiffs hereby incorporated by this reference the allegations of paragraphs 1 through 30, inclusive, and paragraphs 35 and 36, above, as though fully set forth at this place.

39. Each of the defendants failed and neglected to exercise such due care and diligence in performing their duties and obligations with respect to managing, supervising, conducting and directing investments in Plaintiff's account in that, at various times

relevant herein, each of said defendants violated their statutory and common law duties and obligations to Plaintiff by their actions, including, but not limited to, the negligent acts and omissions alleged hereinabove.

40. By the aforementioned acts of omissions, each of said defendants were negligent and grossly negligent and committed a breach of their statutory and common law duties and obligations to Plaintiff.

41. As a proximate result of such negligence and gross negligence, Plaintiff has suffered damages in an amount that cannot yet be fully ascertained, but is believed to exceed $850,000.

42. In doing the acts herein alleged, said defendants should have known that their acts or omissions would

cause damages to Plaintiff and committed said acts and omissions with a conscious disregard of Plaintiff's rights and, therefore, Plaintiff is entitled to recover punitive damages from said defendants of at least $8,500,000.

WHEREFORE, Plaintiff prays for judgment as follows:

1. As to each Claim, compensatory damages of at least $850,000 or according to proof;

2. As to each Claim, punitive damages in the amount of at least $8,500,000;

3. As to each Claim, for interest at the legal rate;

4. As to each Claim, for recission of all agreements by and between Plaintiff and each of the defendants;

5. For costs of suit herein; and

6. For such other and and further relief as the Court may deem just and proper.

DATED: May 2, 1986

KIRCHER & NAKAZATO
ARTHUR NAKAZATO

By: /s/
Arthur Nakazato

Attorneys for Plaintiff Billie L. Wederski

DATED: May 2, 1986

GREENWALD & RESNICK
LAW CORPORATION
BARNET RESNICK, ESQ.

By:/s/
Barnet Resnick

Attorneys for Plaintiff Billie L. Wederski

PROOF OF SERVICE BY MAIL

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 811 West Seventh Street, Suite 1100, Los Angeles, California, 90017.

On November 11, 1987, I served the within Opposition to Petition for a Writ of Certiorari to the Court of Appeal the State of California, Fourth Appellate District, Division Three in re: "Dean Witter Reynolds, Inc. vs. Billie L. Wederski" in the United States Supreme Court, October Term 1987, No. 87-595;

On the Parties in said action, by placing three copies therof enclosed in a sealed envelope with First Class postage fully prepaid, in the United States mail at Los Angeles, California, addressed as follows:

Eugene W. Bell, Esq.
Jones, Bell, Simpson & Abbott
800 Wilshire Boulevard, 5th Floor
Los Angeles, CA 90017

Michael M. Gless, Esq.
Keesal, Young & Logan
Catalina Landing
310 Golden Shore, P.O. Box 1730
Long Beach, CA 90801-1730

All parties reqired to be served have been served.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on November 11, 1987, at Los Angeles, California.

Margaret E. Zepp